

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2001-475-C - ORDER NO. 2002-414

JUNE 6, 2002

IN RE: Application of United Systems Access) ORDER
Telecom, Inc. for a Certificate of Public) GRANTING
Convenience and Necessity to Provide Resold) CERTIFICATE FOR
Interexchange Telecommunications Services) LONG DISTANCE
within the State of South Carolina; and Notice) AUTHORITY; AND
of Transfer of Customer Base of) APPROVAL OF
Essential.com, Inc.) TRANSFER OF
) CUSTOMER BASE

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of United Systems Access Telecom, Inc. ("USA Telecom" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold interexchange telecommunications services within the State of South Carolina. Additionally, the Company requested the approval of the transfer of the customer base of Essential.Com. to USA Telecom and the cancellation of Essential.com's Certificate of Public Convenience and Necessity. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2001) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed USA Telecom to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of USA Telecom's Application and of the manner and time in which to file the appropriate

pleadings for participation in the proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene were filed.

A hearing was convened on May 9, 2002 at 2:30 p.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable William Saunders, Chairman, presided. USA Telecom was represented by John J. Pringle, Jr., Esquire. Adelaide D. Kline, Staff Counsel, represented the Commission Staff.

Donald Hebert, Executive Vice President of USA Telecom, appeared and testified in support of the Application. Hebert testified that he has been involved in the telecommunications industry for the past five years and became associated with USA Telecom in 2001 when the Company became incorporated. The record reveals that USA Telecom is a wholly-owned subsidiary of United States Access, Inc. and was incorporated in the State of Delaware on May 7, 2001. USA Telecom has received authorization to transact business within the State of South Carolina.

Mr. Hebert testified that USA Telecom has no target market in South Carolina at this time. He offered that USA Telecom intends to provide services to the existing customers of Essential.com. According to Mr. Hebert's testimony at the hearing and the record, USA Telecom was the highest bidder for the assets of Essential.com, a certified telecommunications carrier within South Carolina that had filed for voluntary bankruptcy protection under Chapter 11 on June 29, 2001. Essential.com had been certified to provide local and interexchange services in South Carolina under Docket No. 1999-510-

C, Order No. 2000-0395 on April 26, 2000. As the result of a May 9, 2001, Order of the Bankruptcy Court of the United States District Court for the District of Massachusetts, Eastern Division, USA Telecom and Essential.com entered into a management agreement whereby USA Telecom would manage the business operations of Essential.com until USA Telecom had obtained all necessary regulatory approvals from the appropriate state commissions. Mr. Hebert stated that Essential.com had been providing services to 236 customers in South Carolina. He explained that at the time of the hearing, USA Telecom had already received certification from and is currently providing services in thirty-nine states. He said USA Telecom has nine applications pending and is seeking approval in all of the states of the continental United States. Mr. Hebert requested this Commission to grant authority to USA Telecom to provide resold interexchange telecommunications services in South Carolina and to also approve the transfer of the customer base of Essential.com to USA Telecom. He further requested that the Commission cancel the Certificate of Public Convenience and Necessity of Essential.com. upon the granting of a certificate to USA Telecom.

Upon receiving certification from the Commission, USA Telecom intends to provide resold interexchange services to residential and business customers in South Carolina. Specifically, the Company plans to offer direct dialed "1+" message telecommunications service and inbound toll-free service. The record reveals that USA Telecom initially intends to provide non-facilities-based interexchange services to customers throughout the entire State of South Carolina. Mr. Hebert stated that USA Telecom currently does not have plans to offer prepaid debit card services but is aware of

the Commission's \$5,000 bond or certificate of deposit required in connection with the offer or sale of prepaid debit card services should the Company decide to offer those services.

Mr. Hebert testified that USA Telecom is not looking to increase its market in South Carolina at this time. He stated that USA Telecom seeks certification now to be able to serve the customer base of Essential.com. which it acquired in 2001 as a result of an agreement directed by a Bankruptcy Court Order. He additionally said the Company does not intend to own, operate, or manage any telecommunications transmission facilities within the State of South Carolina and does not intend to obtain or construct any such facilities or equipment. He did reserve the Company's right to install its own facilities, however, if and when business conditions warrant and upon approval the Commission. According to Mr. Hebert, USA Telecom may, in the future, market its services via personal and telephone contact by the Company's employees and/or authorized distributors. He said the Company also may advertise its services through print, radio and television media, as well as various forms of direct mailing.

Mr. Hebert testified that USA Telecom has its principal office and headquarters in Kennebunk, Maine. He further testified that USA Telecom has negotiated interexchange resale agreements with Global Crossing, Qwest and Touch America. The record reveals the Company may also execute one or more additional agreements in the future. Mr. Hebert offered that the Company can assure the Commission that any carrier with whom the Company contracts for the provision of interexchange services will have been properly certified by this Commission.

Regarding the Company's technical ability to offer telecommunications services in South Carolina, the record states that the Company has the technical and managerial resources and abilities sufficient to provide non-facilities-based resold telecommunications services in South Carolina. The record further states that USA Telecom's management has extensive experience in providing high quality, low-cost telecommunications services. Mr. Hebert said that USA Telecom will provide reseller services only in this state and its underlying carriers will handle the technical aspects. He testified that the Company will outsource the billing process. He explained it will involve getting the line feeds from the provider and passing that information to a third party billing company in New Jersey. Mr. Hebert offered that the Company's name and toll-free telephone number will appear on the bills.

As to the Company's customer service, Hebert testified that USA Telecom has two customer service offices. He said one office is in Kennebunk, Maine and the other half of the customer people staff is located in a second office in Burlington, Massachusetts. According to Mr. Hebert, the toll-free customer service center is available from 8:00 a.m. until 6:00 p.m. Monday through Friday and has an on-call technician for outages available twenty-four hours a day, seven days a week. He said USA Telecom has a policy of responding to any billing or service inquiries within twenty-four hours. USA Telecom can be reached at the Customer Service office in Maine by toll-free number (888) 872-9400 or by email at customercare@usacsp.com. The Massachusetts office toll-free number for customer service is (888) 746-4983. Mr. Hebert said both the toll-free number and the customer care email address will be printed on customer bills.

Additionally, he said he or Dan Kelly will be the Company's customer service contact person. He said he, Dan Kelly or Steve Gilbert would serve as the regulatory contact person.

As to USA Telecom's managerial abilities to offer the services it proposes to offer in South Carolina, Hebert testified that USA Telecom possesses the managerial resources and abilities sufficient to provide resold interexchange telecommunications services in this state. He said his background includes extensive experience in finance and that he became involved in the telecommunications industry about five years ago. Mr. Hebert testified that Steve Gilbert, USA Telecom's President, has experience in many facets of telecommunications management. The record reveals that Mr. Gilbert most recently served as a Director and Executive Vice President of Log on America, Inc., a competitive local exchange carrier offering local dial-tone, in-state toll and long distance telephone services, as well as digital subscriber line (DSL) Internet access across the Northeast. Mr. Gilbert received his undergraduate degree from the Massachusetts Institute of Technology in mathematics, economics and computer science. He holds a graduate degree from MIT's Sloan School of Management. Mr. Hebert has over twenty years experience in a variety of financial positions in the manufacturing industry. He moved into the telecommunications service sector during the last five years. He is a graduate of the University of Maine with a major in Accounting and a minor in Finance.

In support of USA Telecom's financial ability to provide the services it seeks to provide in South Carolina, Hebert testified that USA Telecom has adequate capital. He explained that the Company was incorporated in mid 2001 with financial backing from a

private investor. He stated that USA Telecom's financial position during the first six months of its operations was determined by start up and acquisition costs. Additionally, Mr. Hebert said the Company recently closed on a financing measure with an Ohio firm to provide additional financing that has a \$3 million cap and the Company is working on additional investors.

With regard to the Company's final Tariff, Mr. Hebert affirmed the Company's agreement to make the Commission Staff's suggested changes. He said USA Telecom would additionally remove the Tariff language relating to the Federal Universal Service Fund. He also confirmed the Company's decision to withdraw its request in its Application to provide operator services. Mr. Hebert agreed to add the Company's email address and telephone number to the bottom of each page of the final Tariff. He acknowledged USA Telecom's obligation to file all reports required by the Commission by certain deadlines.

According to the Application and Hebert's testimony, USA Telecom requests a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976) so that USA Telecom can maintain its records outside of South Carolina. The Company wishes to maintain its books and records at its headquarters in Kennebunk, Maine. Hebert stated that the Company is aware and agrees to abide by the Commission's regulation that requires that these records be made available for examination by the Commission at reasonable hours. USA Telecom also requested that it be allowed to keep its books and financial records according to the Generally Accepted Accounting Principles (GAAP) rather than according to the Uniform System of Accounts (USOA).

According to Hebert, USA Telecom has never had authority denied in any state where it has applied for authority nor has the Company had authority revoked in any state where it has been granted authority. Additionally, he said that USA Telecom has never been the subject of an investigation, fined or sanctioned by a state or federal regulatory body. According to the testimony, USA Telecom has not marketed its services in South Carolina prior to receiving certification. Hebert testified that USA Telecom has received revenues from the completion of intrastate calls in South Carolina prior to certification due to the Bankruptcy Court Order of May 9, 2001 which directed USA Telecom and Essential.com to consummate the sale of Essential.com's customer base to USA Telecom. Finally, Hebert testified USA Telecom will abide by all the Commission's rules, regulations and Orders upon the Company receiving certification to operate as a reseller of intrastate interexchange telecommunications services in South Carolina.

After full consideration of the applicable law, the Company's application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. USA Telecom is organized as a corporation under the laws of the State of Delaware and has been authorized by the Secretary of State to transact business within the State of South Carolina.

2. USA Telecom is a provider of long distance services and wishes to provide long distance services in South Carolina.

3. USA Telecom has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to USA Telecom to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for USA Telecom for its resale of interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. USA Telecom shall not adjust its interexchange rates below the approved maximum level without notice to the Commission and to the public. USA Telecom shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of

subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 1999).

4. If it has not already done so by the date of issuance of this Order, USA Telecom shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Further, USA Telecom shall file a copy of its Bill Form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 103-622.1 (1976) with its final Tariff.

5. USA Telecom is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

6. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. USA Telecom shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If USA Telecom changes underlying carriers, it shall notify the Commission in writing.

8. USA Telecom shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, USA Telecom shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Information on South Carolina Operations for Interexchange Companies and AOS." This form shall be utilized by the Company to file annual financial information with the Commission. Commission gross receipts forms are due to be filed with the Commission no later than October first of each year.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

USA Telecom shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's website at www.psc.state.sc.us/forms; this form shall be utilized for the provision of this

information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

10. With regard to the origination and termination of toll calls within the same LATA, USA Telecom shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dial parity rules established by the Federal Communications Commission pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by order No. 93-462.

11. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

12. The Company also requests a waiver of 26 S.C. Code Ann. Regs. 103-610 (Supp. 2001) which requires the Company's books and records to be kept in the State of South Carolina. The Company desires to keep its books and records at its principal place of business. We find that strict compliance with 26 S.C. Code Regs. 103-610 (Supp. 2001) would produce unusual difficulty for the Company as USA Telecom has no offices located in South Carolina. We therefore find and conclude that a waiver of S.C. Code

Regs. 103-610 (Supp. 2001) would be in the public interest. However, USA Telecom shall maintain its books and records at its principal headquarters in Kennebunk, Maine and shall make available its books and records upon request of the Commission or its authorized representative at all reasonable hours and at a reasonable place. With the understanding that USA Telecom will make available its books and records to the Commission or its authorized representative upon request at reasonable hours, USA Telecom's request for a waiver of Regulation 103-610 is granted.

13. The Commission hereby approves the transfer of the customer base of Essential.com to USA Telecom.

14. The Commission directs that the Certificate of Public Convenience and Necessity of Essential.com be cancelled.

15. The Commission also grants USA Telecom the opportunity to keep its books and records in accordance with GAAP rather than the USOA.

16. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

17. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)